

No. 3504-1Lab71/10255.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Nirula Brothers (P) Ltd., Gurgaon.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 95 of 1970

Between

SHRI RAM NATH, WORKMAN, AND THE MANAGEMENT OF M/S NIRULA BROTHERS (P) LTD.,
GURGAON

Present.—

Shri Sarda Nand, for the workman.

Shri S. K. Basin, for the management.

AWARD

Shri Ram Nath, the concerned workman was in the service of M/s Nirula Brothers, (P) Ltd, Gurgaon. His services were terminated by the management on 28th November, 1969. Feeling aggrieved, he served a demand notice dated 28th November, 1969, asking for his reinstatement with continuity of previous service and full back wages, whereupon conciliation proceedings were initiated by the Conciliation Officer, Gurgaon but without any success.

The Governor of Haryana in exercise of the powers conferred under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, was, therefore, pleased to refer the following dispute for adjudication to this Tribunal,—vide order No. ID/GG/2C-70/15070, dated 21st May, 1970.

2. Whether the termination of services of Shri Ram Nath, was justified and in order?
If not, to what relief is he entitled?

On receipt of the above reference, usual notices were given to the parties. No claim statement was filed on behalf of the workman and he relied merely on the demand notice dated 28th November, 1969, received along with the reference.

In the written statement filed on behalf of the management, some preliminary objections were raised as to the validity of the reference giving rise to the following issues:—

- (1) Whether the reference is invalid because the demand notice given by the workman was not received by the management directly but through the Conciliation Officer and the management had no opportunity to reject the demand before the workman approached the Labour Authority and so this Tribunal has no jurisdiction?
- (2) Whether the reference made to this Court is not an industrial dispute because the workman of the respondent concern has not espoused the case of the claimant Shri Ram Nath?
- (3) Whether the Gurgaon Engineering Workers Union has no *locus standi* to raise the present dispute or to prosecute it?

Only one witness Shri V.K. Shrivastva, Director has been examined on behalf of the management who has deposed that no demand notice was received by the management direct from the concerned workman and that the only demand notice received in the case was from the Conciliation Officer along with his notice directing the management to appear before him in the conciliation proceedings. He has further deposed that one sitting before the Conciliation Officer was attended by him and the other by the Manager.

No evidence has been led in the case by the concerned workman who has not even cared to come himself into the witness box to refute the above contentions raised by the management.

Argument have been heard and I have given a careful consideration to the facts on record and the contention raised on both sides.

The main arguments advanced by the learned representative of the management in the case is that since the concerned workman or his union had not raised the demand the subject matter of the present reference on the management, no industrial dispute within the meaning of the law existed

between the parties which could validly be referred for adjudication to this Tribunal. He has relied upon the Supreme Court decision in Sindhu Resettlement Corporation Ltd., Vs. Industrial Tribunal, Gujrat in support of his above contentions and further referred to me the decision dated May 28, 1969 of the Delhi High Court in Civil Writ No. 100 of 1969 between Fedders LLOYD Corporation Private Ltd. and Lieutenant Governor Delhi and others where in their Lordships Mr. Justice I. D. Dua (C. J.) and Mr. Justice V. S. Deshpanda following the aforesaid decision of the Supreme Court were pleased to observe as under :—

“We are of the view that the decision of the Supreme Court in Sindhu Resettlement Corporation V. Industrial Tribunal, Gujrat (supra) referred to above, has finally established the proposition that a demand by the workmen must be raised first on the management and rejected by them before an industrial dispute can be said to arise and its exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejects the same is not sufficient to constitute an industrial dispute. The decision and dicta of some of the High Courts to the contrary can no longer be considered good law”.

No authority to the contrary has been cited by the learned representative of the workman nor has he been able to refer me to any evidence on the record to show that the demand in question had first been raised by or on behalf of the workman on the management and that being so the conclusion is irresistible that no industrial dispute in fact existed between the management and the concerned workman which could validly be referred for adjudication to this Tribunal. That disposes of preliminary issue No. 1 which for reasons aforesaid is decided against the workman and in favour of the management.

In view of the above decision on issue No. 1, no further discussion is called for in the case and it is not necessary to go into the other issues as there being no industrial dispute between the parties the very reference has to be rejected as being incompetent. I give my award accordingly in the case but without making any order as to costs.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 30th March, 1971.

No. 342, dated the 31st March, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 30 March, 1971.

No. 3491-1Lab-71/10257.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workman and the management of M/s Nirula Bros. (P) Ltd., Gurgaon:—

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 97 of 1970

Between

SHRI JAGDISH LAL WORKMAN AND THE MANAGEMENT OF M/S NIRULA BROS. (P)
LTD., GURGAON.

Present :—

Shri Sarda Nand, for the workman.

Shri S. K. Basin, for the management.

AWARD

Shri Jagdish Lal was in the service of M/s Nirula Bros. (P) Ltd., Gurgaon. His services were terminated by the management on 5th January, 1970. He served the demand notice dated 6th January, 1970; asking for his reinstatement with continuity of his previous service and full back wages, whereupon conciliation proceedings were initiated by the Conciliation Officer, Gurgaon but without any success.

The Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act 1947, was, therefore, pleased to refer the following dispute for adjudication to this Tribunal,—*vide* order No. ID/GG/2F-70/15076, dated 21st May, 1970.

Whether the termination of services of Shri Jagdish Lal Sehgal was justified and in order. If not, to what relief is he entitled?

On receipt of the above reference usual notices were given to the parties. No claim statement was filed on behalf of the workman and reliance was placed merely on the demand notice which was received along with the reference. In the written statement filed on behalf of the management, some preliminary objections were raised as to the validity of the reference giving rise to the following issues:—

1. Whether the reference is invalid because the demand notice given by the workmen was not received by the management directly but through the Conciliation Officer and the management had no opportunity to reject the demand before the workmen approached the Labour Authority and so this Tribunal has no jurisdiction?
2. Whether the reference made to this Court is not an industrial dispute because the workman of the respondent concern has not espoused the cause of the claimant Shri Jagdish Lal?
3. Whether the Gurgaon Engineering Workers Union has no *locus standi* to raise the present dispute or to prosecute it?

The management has examined only one witness Shri V.K. Sirivastva, Director, who has deposed that no demand notice was ever received from the concerned workman and that the only demand notice in the case was received from the Conciliation Officer along with his notice directing the management to appear in the conciliation proceedings before him. He has further stated that one sitting before the Conciliation Officer was attended by him and another by the Manager.

Shri Sarda Nand, General Secretary, Engineering Mazdoor Union, Gurgaon and authorised representative of the workmen coming into the witness box as W.W.1 has deposed that the demand notice was sent direct to the management under postal certificate Ex. W.W. 1/1 and that another demand notice was sent to the Conciliation Officer along with the letter of authority. In cross examination he has denied the suggestion that the postal certificate Ex. W.W. 1/1 was obtained from the post office on 31st July, 1970.

No other evidence has been led in the case on either side. I have carefully considered the facts on record and the contentions raised by the learned representatives of the parties.

The main argument advanced by the learned representative of the management in the case is that since the concerned workman or his union had not raised the demand, the subject matter of the present reference, on the management, no industrial dispute within the meaning of the law existed between the parties which could validly be referred for adjudication to this Tribunal. He has relied upon the Supreme Court decision in *Sindhu Resettlement Corporation Ltd., VS. Industrial Tribunal, Gujrat* in support of his above contention and further referred to me the decision dated May 28, 1969 of the Delhi High Court in Civil Writ No. 100 of 1969 between *Fedders Loyd Corporation Private Ltd., and Lieutenant Governor, Delhi and others* wherein their Lordships Mr. Justice I.D. Dua (C.J) and Mr. Justice V. S. Deshpanda following the aforesaid decision of the Supreme Court were pleased to observe as under:—

“We are of the view that the decision of the Supreme Court in *Sindhu Resettlement Corporation V. Industrial Tribunal, Gujrat* (Supra), referred to above, has finally established the proposition that a demand by the workmen must be raised first on the management and rejected by them before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejects the same is not sufficient to constitute an industrial dispute. The decision and dicta of some of the High Courts to the contrary can no longer be considered good law.”

The learned representative of the workman has not cited any authority to the contrary nor has he been able to refer to me any reliable piece of evidence on the record to show that the demand in question had ever been raised first on the management, as required by law. He has drawn my attention to the postal certificate Ex. W.W. 1/1, the genuineness of which, however, can not be held to be above board. In the first instance this postal certificate was produced at a very late stage on 12th October, 1970, long after the preliminary objection in this behalf had been raised by the management in the written statement filed in the case on 12th June, 1970. There is no mention of this fact in the demand notice dated 6th January, 1970. and no separate claim statement was filed on behalf of

the workman to plead this fact. The workman has himself not come into the witness box. From the statement of his representative Shri Sarda Nand W.W. 1 also, it is not clear as to on what date exactly this certificate had been obtained from the post office although he has denied the suggestion specifically put to him in cross examination that it had been obtained on 31st July, 1970. It is further not clear from the record as to on what date the demand notice which purports to be of 6th January, 1970 was received by the Conciliation Officer. At any rate, the demand to constitute an industrial dispute should have been raised first on the management and the management should have had reasonable time to consider this demand to accept or reject the same, as the case might be, for the matter was taken for conciliation by the Conciliation Officer. The necessary evidence to refute the above contention raised on behalf of the management which finds full support in the case law referred to above is thus clearly lacking.

That disposes of issue No. 1 which for reasons aforesaid is held against the workman and in favour of the management.

In view of the above decision on issue No. 4, no further discussion is called for in the case and it is not necessary to go into the other issues as there being no industrial dispute between the parties the very reference has to be rejected as being incompetent. I give my award accordingly in the case but without making any order as to costs.

Dated : 31st March, 1971.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 327, dated the 31st March, 1971.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated : 31st March, 1971.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 3489-1Lab-70/10262.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Gedore Tools India (P) Ltd., Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 1 of 1971

between

SHRI RAJ KUMAR WORKMAN C/O FARIDABAD ENGINEERING WORKERS UNION (REGD),
N. I. T., FARIDABAD AND THE MANAGEMENT OF M/S GEDORE TOOLS INDIA (P) LTD.,
FARIDABAD

Present.—

Shri Bhajan Singh, for the workman.

Shri R. C. Sharma, for the management.

AWARD

Shri Raj Kumar was in the service of M/s Gedore Tools India (P) Ltd., Faridabad. His services were terminated and this gave rise to an industrial dispute. Accordingly, the Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Court,—vide Gazette Notification No. ID/FD/54A/55602, dated 3rd December, 1970.

“Whether the termination of services of Shri Raj Kumar was justified and in order? If not, to what relief is he entitled?”

On receipt of the reference, usual notices were issued in response to which a written statement was filed on behalf of the management in which it was pleaded that a compromise has been arrived at between the parties and the workman was no longer interested in prosecuting the case. Shri Darshan Singh who represented the workman stated that he has no instructions regarding the compromise and requested for a date in order to obtain the necessary instructions. At his request the case was adjourned to 22nd March, 1971. On the date fixed Shri Bhajan Singh appeared on behalf of the workman without any letter of authority from the workman and made a request for adjournment, on the ground that Shri Darshan Singh was busy in a meeting of the regional committee of the Provident Fund Scheme at Chandigarh. The personal presence of Shri Darshan Singh was not required. All that was required was that the workman should admit or deny the alleged compromise. The statement of Shri P. L. Miglani, Chief Time Keeper of the respondent concern has been recorded. He has approved the original letter Ex. M.W. 1/1 which was given by the workman wanting to withdraw his case. Shri Miglani has also proved the writing Ex given by the workman and marked Ex. M.W. 1/1 by which he has withdrawn a notice of demand, Ex. M.W. 1/4 is the final payment advice. Shri Miglani has also stated that the workman Shri Raj Kumar has come back into the service of respondent concern. Under these circumstances, there is no point in adjourning the case further. Since the workman has not led any evidence to prove that the termination of his services was not justified, I decide the case in favour of the management. I give my award accordingly.

No order as to costs.

Dated 22nd March, 1971.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.
(Camp Faridabad)

No. 576, dated 31st March,

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under sub-section (4) of section 33-C of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 3501-1Lab-70/10265.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Municipal Committee, Gurgaon :—

BEFORE SHRI P. N. THUKRAL PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 187 of 1970

between

SHRI RAM AVTAR WORKMAN THROUGH GENERAL SECRETARY, ENGINEERING
MAZDOOR, UNION RAILWAY ROAD, GURGAON CANTT. AND THE MANAGEMENT
OF M/S MUNICIPAL COMMITTEE, GURGAON.

Present.—Shri C. B. Kaushik, for the workman.

Shri Roop Dev Sharma, for the management.

AWARD

Shri Ram Avtar was in the service of M/s Municipal Committee, Gurgaon as a Leading Fireman. His services were terminated and this gave rise to an industrial dispute. Accordingly, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial

Disputes Act, 1947, referred the following dispute for adjudication to this Court,—vide Gazette Notification No. ID/GG/23-B-70/31805, dated 8th October, 1970.

“Whether the termination of services of Shri Ram Avtar Sharma, Leading Fireman was justified and in order ? If not ; to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the Municipal Committee filed the written statement. The plea taken on behalf of the respondent municipal committee is that Shri Ram Avtar was appointed on a purely temporary basis for a period of 6 months or till a qualified candidate from Haryana Public Service Commission was available and that his services could be terminated at time without any notice or without assigning any reason. So the termination of his services was justified. It is, further pleaded that the workman has been appointed on his original post on his own request on the condition that he will not claim any remuneration for the period he did not remain in service. On merits the plea of the committee is that the workman created party factions and accordingly his service and the service of the Sub-Fire Officer were terminated but on the prayer of the applicant and on humanitarian grounds he was re-employed because he gave in writing that he would not claim his back wages, so the question of giving him back wages does not arise. The workman Shri Ram Avtar in reply has stated that he did not give the writing Exhibit M. I voluntarily by which he is supposed to have given up his back wages. The pleadings of the parties gave rise to the following issues :—

1. Whether the termination of services of Shri Ram Avtar Sharma, Leading Fireman was justified and in order ? If not ; to what relief is he entitled ?
2. If issue No. 1 is found in favour of the workman whether the writing Exhibit M. I was not given by him voluntarily and he is entitled to full back wages and continuity of service ?

Issue No. 1—Shri Roop Dev Sharma, Secretary of the Committee has satisfactorily proved that the workman Shri Ram Avtar was appointed on purely temporary basis and that his services could be terminated without giving him any notice. In cross examination however Shri Roop Dev Sharma admits that the applicant and the Sub-Fire Officer started making reports against one another and so the committee got fed up with both of them and terminated their services. Shri Sharma however admits that no charge sheet was framed against the workman nor any enquiry was held against him. It is also not the case of the committee that the services of the workman Shri Ram Avtar were no longer required. The Secretary of the Committee states that after terminating the services of Shri Ram Avtar the Fireman was promoted as a Leading Fireman. It is also admitted that the Public Service Commission has also not appointed any person as a Leading Fireman. It is thus clear that the services of Shri Ram Avtar were terminated because of his alleged misconduct because he made reports against the Sub-Fire Officer. Since no opportunity was given to Shri Ram Avtar to explain his position, I am of the opinion, that the termination of his services was not justified.

Issue No. 2.—It is submitted that the workman is not entitled to any back wages because of the writing Exhibit M. I giving by him by which he has given up his claim for back wages. In my opinion the workman can not be deprived of his back wages simply on the basis of the writing Exhibit M. I. I have held under issue No. 1 that the termination of services of Shri Ram Avtar was not justified and normally he would be entitled to his back wages. The municipal committee has not shown what was the consideration for which Shri Ram Avtar relinquished his claim for back wages. So the writing Exhibit M. 1 has no legal force and since the termination of services of Shri Ram Avtar was wrongful, he is entitled to continuity of service and full back wages. I give my award accordingly. No order as to costs.

P. N. THUKRAL,

Presiding Officer,

Dated 25th March, 1971.

Labour Court, Haryana,

Rohtak.

No. 554, dated Rohtak, the 25th March 1971.

Forwarded (Four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,

Labour Court, Haryana,

Rohtak.